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CRS Issue Statement on International Law and U.S. Sovereignty

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Rapid technological advances in transportation and communication, among other areas, have led to a level of interconnectedness among societies that would likely have astounded the Framers of our Constitution. While predictions about the demise of sovereignty as a fundamental principle ordering international relations seem premature, the rise of importance of non-state actors, the increased necessity for international cooperation to regulate such matters as environmental protection and the conduct of financial institutions, and the concomitant increase in opportunities for disputes to arise with respect to matters spanning borders and oceans promise to generate new issues of concern for Members of Congress and their constituents.

Under the Constitution, the foreign affairs powers are divided among the three branches of government in ways that overlap considerably, although not without friction. Treaties made under the authority of the United States are indisputably the law of the land, yet the judicial power does not always provide a means to enforce their provisions. State and even local governments have undertaken initiatives or issued decisions that have an impact on the foreign relations of the United States. None of these propositions is new. Will globalization have any impact on the interpretation of our Constitution or cause tectonic shifts in the allocation of federal powers among the branches?

Some international trends of relatively recent provenance are discernible that may raise questions for Congress. Multinational corporations appear to have attained a level of power that could be wielded in ways that interfere more frequently with U.S. and global initiatives. How must international law adapt to provide for effective accountability of such non-state actors, without impeding the flow of international commerce? Increasing accessibility of courts around the world to alien litigants may have given rise to international “forum shopping” that subjects U.S. citizens to foreign judicial systems that are not obligated to recognize rights they would enjoy under the U.S. Constitution. Conversely, U.S. courts are ever more frequently called upon to resolve disputes between U.S. citizens and foreign subjects or governments, or even between foreign parties without significant ties to the United States. How do the actions of our courts in such cases bear on foreign relations, and how can Congress ensure that any impact is positive? In cases where these interests are at odds, are outcomes favorable to U.S. nationals who have been harmed always preferable to results that further international relations? Is the revocation of foreign sovereign immunity for certain countries an effective means of carrying out U.S. policy? What is, or should be, the effect of decision making by international bodies and tribunals on U.S. laws, policies, and practices? Should U.S. courts interpret treaties consistently with other treaty parties’ interpretation?

Topics to be addressed here include constitutional separation of powers and federalism questions that involve foreign policy or the implementation of international law; the relationship between international law and the U.S. legal system; the extraterritorial reach of the U.S. Constitution and federal powers; judicial acceptance of treaty interpretations by foreign and international courts; universal jurisdiction and the exercise of extraterritorial jurisdiction of foreign (or international) courts over U.S. persons; international dispute resolution; and the relationship between sovereign states and non-state actors under international law.

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